

REMARKS

Overview

Claims 8-17 have been rejected under 35 U.S.C. § 102 as being anticipated by Duncan. Applicant respectfully traverses this rejection, and requests reconsideration of the claims, as amended.

In the Final Office Action, the Examiner asserts that Applicant has attempted to reintroduce subject matter not elected with respect to the guide. Applicant has amended claims 8-15 by replacing "guide" and "guides" with --member-- and --members--, similar to the originally filed claims. Therefore, the Examiner's assertion regarding non-elected subject matter is moot.

Independent claim 8 requires a member on each opposite side of the rack having an outwardly extending surface "curved about a vertical axis" for engagement with a vertical sidewall of the dishwasher to substantially preclude lateral movement of the rack. This limitation regarding a surface curved about a vertical axis was originally contained in claims 16 and 17, and therefore does not constitute new matter and does not require a new search. The curved surface includes the surface 28 of the clip 22 shown in the first embodiment of Figures 1-5, the curved perimeter surface of the wheel 38 shown in the second embodiment of Figures 6 and 7, and the curved profile of the integrally formed projection 42 shown in the third embodiment of Figure 8.

The Duncan patent does not have any curved surface extending around a vertical axis, as required by claim 8. At best, the wheels opposite sides of the Duncan rack have a curved outer perimeter extending about the horizontal axis defined by the axle 30, as seen in Figures 1 and 4. Therefore, Duncan does not meet the limitations of claim 8, such that claim 8 distinguishes over Duncan so as to be in proper form for allowance.

Claims 9-15 depend from claim 8 and should be allowable as depending from an allowable base claim.

For purposes of 37 C.F.R. § 1.116, this amendment is being presented after the final office action so as to address the Examiner's comments regarding non-elected subject matter which was made for the first time in the final office action, and so as to write dependent claim 17 in independent form as amended claim 8, including the limitations from claims 16 and 17, so as to distinguish the cited Duncan patent.

In view of the foregoing, Applicant respectfully requests that the present amendment be entered and that a Notice of Allowance be issued.

No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



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